

electronic databases) and directory assistance databases associated with the areas in which ANTC provides services to such Customers, and will distribute **such** directories to such Customers, in an identical and transparent manner in which it provides those functions for **its own** Customers' telephone numbers.

25.1.2 NYNEX will include all ANTC **NXX** codes on appropriate existing calling charts in **the NYNEX** Customer Guide section of the directory in the same manner as it provides this information for its **own NXX** codes.

25.1.3 ANTC will provide NYNEX with its directory listings and daily updates to those listings (including new, changed, and deleted listings) in **a** mutually agreed upon format at no charge.

25.1.4 NYNEX will accord ANTC's directory listing information the same level of confidentiality which NYNEX **accords** its own directory listing information.

25.1.5 NYNEX shall provide ANTC at no charge with (i) one basic single line white and yellow page directory listing per business Customer number, or one basic single line white page directory listing per residence Customer number, (ii) directory distribution for ANTC Customers, and (iii) listings of ANTC Customers in the **directory assistance** database. Any other directory listing service that NYNEX provides to **its own** customers will be provided at the appropriate charge pursuant to applicable tariffs.

25.1.6 NYNEX will provide ANTC with a report **of** all ANTC Customer listings ninety (90) Days prior to directory publication in **such form** and format as may be mutually agreed to by both parties. Both Parties shall use their best efforts to ensure the accurate listing **of such** information.

25.1.7 NYNEX shall provide ANTC with the same level of damages and remedies available to NYNEX's end users should NYNEX **fail to meet its** obligations set forth in sections **25.1.-25.1.6**. If, through no fault of ANTC or its end user, (*i.e.*, ANTC reviewed the verification report sent by NYNEX and indicated an error which NYNEX did not **correct**), NYNEX fails to include **an** ANTC end user listing in any applicable directory or database, then NYNEX shall provide ANTC with a **letter** that ANTC can share with **its** customer indicating that the failure **was** not due to **ANTC's** actions. The Parties shall, within ninety (90) Days **of** the execution **of this** Agreement, agree on template language **for such a letter**, as well **as** template language for the cover letter which will be sent by ANTC to the affected customer.

25.1.8 Yellow Page Maintenance

NYNEX will work cooperatively with ANTC so that yellow page advertisements purchased by Customers who switch their service to ANTC (including Customers utilizing Interim Telephone Number Portability) are maintained without interruption. NYNEX will allow ANTC Customers to purchase new yellow pages advertisements without discrimination, under the identical rates, terms and conditions that apply to NYNEX's Customers.

25.1.9 Information Pages

NYNEX will include in the 'Information Pages' or Comparable section of its White Pages Directories for areas served by ANTC, listings provided by ANTC for ANTC's installation, repair and customer service and other service-oriented information, including an appropriate identifying logo. The size and display of such listings shall be the same as that provided by NYNEX to other LECs and resellers and shall appear in the manner that **such** information appears for subscribers of NYNEX and other LECs. NYNEX shall not charge ANTC for inclusion of this information.

25.1.10 ANTC agrees to take reasonable actions, in accordance with prevailing industry standards, to limit its liability and that of its service providers (*i.e.*, NYNEX) with ANTC's Customers for any errors or omissions in any listing published hereunder for ANTC's Customer (*e.g.*, limiting liability to no more than the cost of service). Nothing in this subsection shall in any way limit the indemnification obligations of NYNEX under Section 31 of this Agreement.

25.2 Directory Assistance ("DA") and Operator Services

At ANTC's election, NYNEX will provide Directory Assistance to ANTC end users on behalf of ANTC pursuant to the following terms and conditions:

25.2.1 NYNEX will offer Directory Assistance ("DA") service to ANTC's customers served by ANTC's own switch over separate trunk groups ordered by ANTC to the NYNEX Traffic Operation Position System ("TOPS") switch(es) as specified by NYNEX. Access to **the** NYNEX DA platform from ANTC's local switch requires that ANTC utilize Feature Group C ("FG-C") . Modified Operator Services Signaling. The ~~IOF~~ mileage rate for the facility will be based on airline mileage using V&H coordinate methods from the ANTC location to the nearest NYNEX TOPS. Trunk terminations at the TOPS switch(es) require ANTC to purchase trunk ports at rates specified in the Pricing Attachment. For each trunk group ANTC must indicate the DA option selected **as** set forth in 25.2.3 (a) immediately following. NYNEX also provides ANTC, using the unbundled local switching element, access to this optional service

either through dedicated IOF and trunk ports or on shared operator service trunks between the end office in which they have unbundled local switching ports and the TOPS switches. Additional per minute of use ("MOU") local switching charges will apply for all calls which interconnect from the unbundled local switching ports to the NYNEX TOPS as described in the Pricing Attachment.

25.2.2 Directory Assistance

(a) NYNEX shall provide ANTC end users access to Telephone Directory Assistance operators via **411,555-1212** or **1+ (NPA)-555-1212** dialing.

(b) Rates for requests for Directory Assistance will be billed to ANTC and are set forth in the Pricing Attachment. ANTC will not receive any Directory Assistance call allowances.

25.2.3 Directory Assistance with Branding

At ANTC's election, NYNEX shall provide branded DA

(a) ANTC shall select one of the three options for the branding announcement. ANTC may change its selection upon request with reasonable notice and NYNEX shall promptly comply.

- (i) ANTC may provide NYNEX with a ANTC branded, introductory Directory Assistance and Operator Services announcement which will be played for all ANTC end users completing DA or Operator Services calls over the trunk group to the NYNEX TOPS.
- (ii) ANTC may request NYNEX branded announcement
- (iii) ANTC may request an unbranded, generic announcement.

(b) This announcement message may be a maximum of eighteen (18) seconds and may be recorded by ANTC or, at ANTC's request, by NYNEX. A minimum of two (2) audio cassette recordings of the ANTC branding announcement must be forwarded to NYNEX.

(c) Rates for requests for Directory Assistance with branding will be billed to **ANTC** and are set forth in the Pricing Attachment.

25.3 Directory Assistance Call Completion ('DACC')

NYNEX shall provide, at ANTC's election, automatic connection of a ANTC end user calling NYNEX DA to the published telephone number requested pursuant to the terms set forth below.

(a) After ~~the~~ NYNEX DA operator provides the requested number, a recorded service message will offer to connect the caller to that number for a specified additional charge.

(b) The caller can accept the offer for DACC by depressing a button (touch tone) or responding by voice (dial), ~~as~~ instructed by the voice message.

(c) The DACC charge will apply as set forth in the Pricing Attachment. In addition, for ~~calls~~ originating from a facilities-based **ANTC** switch or for ~~calls~~ from ANTC unbundled local switching line ports, there will be charges to terminate the call from the TOPS tandem to the called party. These include the per minute of use Unbundled Tandem Transport Charge ("**UTTC**") assessed for each call transported between the TOPS tandem and ~~the~~ end office, the per minute of use Tandem Transit Switching Charge ("**TTSC**") assessed for each call that traverses a NYNEX tandem switch, and ~~the~~ appropriate per minute of use charges for reciprocal compensation ('UNRCC' or '**UCRCC**') depending on the terminating end office switch, as set forth in the Pricing Attachment.

(d) DACC is available to ANTC Customers and from public telephones on a collect, bill to third number or calling card basis. **The** appropriate charge based on the billing option used will apply in addition to the DACC charge.

(e) DACC is available with all telephone numbers in the NYNEX DA database except: (i) non-published telephone numbers, (ii) interLATA numbers and (iii) 700, 800 and 900 numbers.

(f) When a caller requests more than one number for Directory Assistance, DACC is offered only for the ~~first~~ eligible listing that **was** selected by the operator.

(g) The **DACC** charge applies only to calls actually completed.

(h) **The** DACC charge will be credited for completion of ~~calls~~ to the wrong number, incomplete connections or ~~calls~~ with unsatisfactory transmission as set forth in Section **25.4** herein.

25.4 Directory Assistance Credits

A credit allowance will apply to ANTC for directory inaccessibility, wrong numbers, cut-offs or poor transmission. When the ANTC end user reports to the NYNEX directory assistance operator such a call and the number requested, the number provided and the reason the number provided is incorrect, the number of calls for which a credit will apply will be developed by the NYNEX DA operator and credited to ANTC identifying the specific ANTC end user to whom the credit applies.

25.5 Direct Access to Directory Assistance ('DADA')

Direct Access to Directory Assistance ('DADA') is a database service that provides for access to NYNEX listings by a ANTC operator. The DADA database is a physically distinct entity from the NYNEX DA database, populated with identical listing data, and updated from the same source on a daily basis,

25.5.1 ANTC is required to arrange for interconnection to the database. NYNEX will interconnect at any technically feasible point designated by ANTC.

25.5.2 NYNEX will provide ANTC with a User Guide for training its agents.

25.5.3. Rates and Charges for DADA are set forth in the Pricing Attachment

25.6 Inward Operator Services

Inward Operator Services enables the ANTC end user or its operator service provider to be connected to the NYNEX TOPS office(s) for the purpose of providing operator services to their end users.

25.6.1 There are two types of Inward Operator Services:

(a) Busv Line Verification ('BLV'):

BLV is an option where, at the request of ANTC's end user or its operator service provider, a NYNEX operator will attempt to determine the status of an exchange service line (e.g., conversation in progress, available to receive a call or out of service) and report to ANTC's end user or its operator service provider.

(b) Busv Line Verification/Interrupt (*BLV/I*)

BLV/I is an option where, at the request of ANTC's end user or its operator service provider, a NYNEX operator determines and reports that a conversation is in progress on an exchange service line and subsequently interrupts such conversation to request that the conversation be terminated so that ANTC's end user can attempt to complete a call to the line.

25.6.2 Inward Operator Services are provided over trunk groups ordered by ANTC or its alternate operator service provider to the NYNU: TOPS switch(es) as specified by NYNEX

25.6.3 Inward Operator Services cannot be provided on ported telephone numbers or telephone numbers which forward calls using Call Forwarding Variable service features.

25.6.4 NYNEX will provide BLV and BLV/I for telephone numbers provided in its operating territory.

25.6.5 The NYNEX operator will respond to one telephone number per call on requests for BLV or BLV/I.

25.6.6 NYNEX will designate which TOPS switch(es) services which NXXs and make such information available to ANTC.

25.6.7 ANTC shall order Inward Operator Services as set forth in this Section.

25.6.8 Rates and Charges for Inward Operator Services are set forth in the Pricing Attachment.

25.7 Operator Service ('OS')

At ANTC's election, NYNEX shall provide for the routing of Operator Services ('OS') calls dialed by ANTC subscribers directly to either the ANTC Operator Services platform or to the NYNEX Operator Services platform as specified by ANTC pursuant to the following terms and conditions:

25.7.1 NYNEX will offer OS to ANTC customers served by ANTC switches over separate trunk groups ordered by ANTC to the NYNEX TOPS switch(es) as specified by NYNEX. Access to the NYNEX OS platform from ANTC's local switch requires that ANTC utilize Feature Group C Modified Operator Services Signaling. The IOF mileage rate for the facility will be based on airline mileage using V&H coordinate methods from the ANTC location to the

nearest NYNEX TOPS. Trunk terminations at the TOPS switch(es) require ANTC to purchase trunk ports at rates specified in the Pricing Attachment. For each trunk group, ANTC must indicate the branding option selected as set forth in Sections 25.2.3(a) preceding. NYNEX also provides ANTC, using the unbundled local switching element, access to this optional service either through dedicated IOF and trunk ports or on shared operator service trunks between the end office in which they have unbundled local switching ports and the TOPS switches. Additional per minute of use (MOU) local switching charges will apply for all calls which interconnect from the unbundled local switching ports to the NYNEX TOPS at rates set forth in the Pricing Attachment

25.8 0+ Mechanized Operator Calls (Calling Card, Collect, Bill to Third Number):

At ANTC's election, NYNEX shall make available to ANTC the ability for ANTC to provide their end user the ability, through the mechanized NYNEX operator interface, to complete calls via 0+ dialing with alternate billing capabilities without live operator assistance pursuant to the terms and conditions set forth below. Alternate billing call completions can be Calling Card, Collect or Bill to Third Number.

25.8.1 0+ Mechanized calls may be provided over the same DA trunk groups which establish interconnection from the ANTC switch or the trunk groups which provide interconnection from the ANTC unbundled local switching line ports to the NYNEX TOPS.

25.8.2 Rates for requests for 0+ Mechanized Calls will be billed to ANTC and are set forth in the Pricing Attachment. In addition, for calls originating from a facilities-based ANTC switch or for calls from ANTC unbundled local switching line ports, there will be charges to terminate the call from the TOPS tandem to the called party. These include the per minute of use UTTC assessed for each call transported between the TOPS tandem and the end office, the per minute of use TTSC assessed for each call that traverses a NYNEX tandem switch, and the appropriate per minute of use charges for reciprocal compensation (UNRCC or UCRCC) depending on the terminating end office switch, as set forth in the Pricing Attachment

25.9 0- Operator Handled Calls (Calling Card, Collect, Bill to Third Number)

At ANTC's election, NYNEX shall make available to ANTC the ability to provide ANTC's end user, through the NYNEX operator, the ability to complete intraLATA calls via 0- dialing with alternate billing capabilities and live operator assistance pursuant to the terms and conditions set forth below. Alternate billing

call completions can be Calling Card, Collect or Bill to Third Number, Station to Station and Person to Person.

25.9.1 0- Operator Handled Calls may be provided over the same DA trunk groups which establish interconnection from the ANTC switch or the trunk groups which provide interconnection from the ANTC unbundled local switching line ports to the NYNEX TOPS.

25.9.2 Rates for requests for 0- Operator Handled Calls will be billed to ANTC and are set forth in **the** Pricing Attachment. In addition, for **calls** originating from a facilities-based ANTC switch or for **calls** from ANTC unbundled local switching line ports, there will be charges to terminate the **call** from the TOPS tandem to the called party. These include the per minute **of use** UTTC assessed for each call transported between the TOPS tandem and the end **office**, the per minute **of use** TTSC assessed for each call that traverses a NYNEX tandem switch, and the appropriate per minute **of use** charges for reciprocal compensation (UNRCC or UCRCC) depending on the **terminating** end office switch, as set forth in the Pricing Attachment.

25.10 Operator Emergency Bulletin Service

At ANTC's election, NYNEX shall provide ANTC with emergency numbers of police, fire, ambulance and Public Safety Answering Points (PSAP) in the NYNEX serving area so that ANTC operators can connect callers directly to the proper emergency bureaus pursuant to the followings terms and conditions.

25.10.1 NYNEX shall make available the NYNEX Operator Emergency Bulletin Service which lists the emergency, police, fire, ambulance and PSAP telephone numbers by municipality in alphabetical order for each of the areas served by NYNEX

25.10.2 NYNEX shall make available Operator Emergency Bulletin Service for use by ANTC operators for the sole purpose of assisting callers in reaching an emergency bureau.

25.10.3 Operator Emergency Bulletin Service is a **copy of** NYNEX's own emergency bulletin. **This** agreement includes one annual copy of the bulletin plus periodic updates during the year. Independent telephone companies' emergency numbers are not included.

25.10.4. Rates and charges for Operator Emergency Bulletin service are set forth in the Pricing Attachment.

25.11 Operator Passthrough Service

At ANTC's election, NYNEX shall provide ANTC's end users with access to operators of their Presubscribed IXC for operator assisted call completion pursuant to the following terms and conditions:

25.11.1 This option applies only when the Presubscribed IXC provides Operator Services for ANTC's end users for calls originating from a particular LATA and is capable of receiving calls passed through it by NYNEX in that LATA

25.11.2 NYNW will, when requested by ANTC's end user, connect that end user to a specified IXC for operator call completion provided that IXC offers operator services in that end user's originating LATA and is capable of receiving calls passed through to it by NYNEX in that LATA.

25.11.3 If the IXC does not provide Operator Services for ANTC's end user, at the option of the IXC, NYNW will provide ANTC's end user with access to an IXC designated Operator Services Provider or to a NYNEX provided announcement which will direct ANTC's end user to contact their Presubscribed IXC for dialing instructions.

25.11.4 The Operator Passthrough charge is applied on an operator work second basis, and rated using the 0-Operator Handled calls in the Pricing Attachment

25.11.5 ANTC will be assessed this charge on calls that are passed through to either the Presubscribed IXC's operator, or a NYNEX provided recording indicating that the IXC does not provide service in that area.

25.11.6 Rates and charges applied to Operator Passthrough Service are set forth in the Pricing Attachment

26.0 GENERAL RESPONSIBILITIES OF THE PARTIES

26.1 Both NYNEX and ANTC shall use their best efforts to comply with the Network Interconnection Schedule set forth in Attachment 4.0.

26.2 At all times, NM shall provide the same quality and level of interconnection, access to Unbundled Network Elements and Wholesale Services as that provided to itself, its affiliates and any other Telecommunications Carriers consistent with its obligations and duties under the Act.

26.3 The Parties shall exchange technical descriptions and forecasts of their Interconnection and traffic requirements in sufficient detail necessary to establish the Interconnections required to assure traffic completion to and from all Customers in their respective designated service areas. ANTC, for the purpose of ubiquitous connectivity, network diversity and alternate routing, shall connect to at least one Tandem Office Switch for the receipt/completion of traffic to any NYNEX End Office Switch. The Parties shall establish, as part of the Joint Grooming Plan, overflow routing and diversity plans.

26.4 Thirty (30) Days after the Effective Date and each quarter during the term of this Agreement, each Party shall provide the other Party with a rolling, six (6) calendar month, non-binding forecast of its traffic and volume requirements for the services and Network Elements provided under this Agreement in the form and in such detail as agreed by the Parties. Notwithstanding Section 36, the Parties agree that each forecast provided under this Section **26.4** shall be deemed 'Proprietary Information' under Section 36.1.1.

26.5 Any Party that is required pursuant to this Agreement to provide a forecast (the 'Forecast Provider') or the Party that is entitled pursuant to this Agreement to receive a forecast (the 'Forecast Recipient') with respect to traffic and volume requirements for the services and Network Elements provided under this Agreement may request in addition to non-binding forecasts required by Section **26.4** that the other Party enter into negotiations to establish a forecast (a 'Binding Forecast') that commits such Forecast Provider to purchase, and such Forecast Recipient to provide, a specified volume to be utilized as set forth in such Binding Forecast. The Forecast Provider and Forecast Recipient shall negotiate the terms of such Binding Forecast in good faith and shall include in such Binding Forecast provisions regarding price, quantity, liability for failure to perform under a Binding Forecast and any other terms desired by such Forecast Provider and Forecast Recipient. Notwithstanding Section **36**, the Parties agree that each forecast provided under this Section **26.5** shall be deemed 'Proprietary Information' under Section 36.1 - ■ -

26.6 Subject to and within the limitations and constraints of each Party's network, each Party is individually responsible (A) to provide facilities within its network which are necessary for routing, transporting, measuring; and (B) for billing traffic from the other Party's network, and (C) for delivering such traffic to the other Party's network, in the industry-standard format compatible with the other Party's network and to terminate the traffic it receives in that standard format to the proper address on its network. See BOC Notes on the Network (SR-TSV-00275) for the description of the design of local exchange carrier network. Such facilities shall be designed based upon the description and forecasts provided under Sections **26.3- 26.5** above. The Parties are each solely responsible for

participation in and compliance with national network plans, including The National Network Security Plan and The Emergency Preparedness Plan.

26.7 Neither Party shall use any Wholesale Services, Network Elements, or other facilities services provided in this Agreement in any manner that interferes with other persons in the use of their service, prevents other persons from using their service, or otherwise impairs the quality of service to other carriers or to either Party's Customers, and either Party may discontinue or refuse service if the other Party violates this provision. Upon such violation, either Party shall provide the other Party notice, if practicable, at the earliest practicable time.

26.8 Intentionally Left Blank

26.9 Prevention of Unauthorized Use

(a) The Parties agree to cooperate to prevent, identify, and cure unauthorized use or fraud associated with clip on fraud, third-number billed calls, calling card calls, information provider calls, abuse of remote access features, off-hour abuse, network and/or PBX hacking, and viruses, and any other services related to this Agreement. The Parties shall meet at least two times a year to discuss ways to minimize or prevent unauthorized use. NYNEX shall make available any fraud or unauthorized use prevention procedures or equipment it uses to ANTC.

(b) A Party shall promptly notify the other whenever it suspects or knows of unauthorized use of Wholesale Services, Unbundled Network Elements, or any other facilities or services provided hereunder and shall assist the other in the identification of responsible individuals, the preparation and presentation of relevant information to federal, state and/or local officials for the purpose of prosecuting those individuals responsible for the unauthorized use of the Wholesale Services, Unbundled Network Elements, or any other facilities or services and in any legal actions that one or both may bring against third parties responsible for the unauthorized use of any of Wholesale Services, Unbundled Network Elements, or any other facilities or services provided hereunder. A Party shall provide, where requested and where available, any relevant call information, including the number on which the call was received, the translated number, the circuit number, the date and time of call, call duration, switch identification, and identification of trunk type.

(c) Both Parties shall use all reasonable efforts to prevent, monitor or cure unauthorized use. If a Party fails to do so and that Party had the ability to prevent the unauthorized or fraudulent use or where that Party had the responsibility to monitor, detect, or cure the unauthorized use and it failed to do so or failed to act promptly to prevent continued abuse, and where such failure

was not caused in part by the failure of the other Party to promptly give notice of information in its possession regarding the occurrence of the fraudulent or unauthorized use, then that Party shall bear the entire amount of the liability. If both Parties failed to act reasonably they shall share on a pro rata basis any financial responsibility for the unauthorized use. If the Parties are unable to agree on the appropriate financial responsibility for the unauthorized use, the Parties shall submit the matter to arbitration pursuant to Attachment ADR. Unless otherwise mutually agreed upon by the Parties, reasonable efforts shall not include the monitoring or reviewing by NYNEX of call detail or other customer usage information for ANTC's customers.

(d) This Section ~~(26.9)~~ shall apply to all Wholesale Services, Unbundled Network Elements and other services and facilities provided in this Agreement

(e) Nothing herein shall be deemed to establish or expand the liability of either Party to any third party for unauthorized or fraudulent use.

26.10 Each Party is responsible for administering NXX codes assigned to it

26.11 Each Party is responsible for obtaining Local Exchange Routing Guide ("LERG") listings of CLLI codes assigned to its switches. The Parties shall provide, upon reasonable request, listings of CLLI codes assigned to its switches to the other Party.

26.12 Each Party shall use the LERG published by Bellcore or its successor for obtaining routing information and shall provide all required information to Bellcore for maintaining the LERG in a timely manner.

26.13 Each Party shall program and update its own Tandem Switches and End Office switches and network systems to recognize and route traffic to and from the other Party's assigned NXX codes. Except as mutually agreed or as otherwise expressly defined in this Agreement, neither Party shall impose any fees or charges on the other Party for such activities. The Parties shall use best efforts to program and promptly update their switches upon notification by the other Party of the assignment of NXX codes or new numbers. NYNEX will test the NXX activation through the VETS system and provide the results to ANTC. ANTC shall notify NYNEX of a failure to program and update NYNEX's Tandem Switches and End Office Switches within two (2) business days, and in the event NYNEX shall fail to take appropriate corrective action within five (5) business days of such notification, subject to the provisions of Sections 33.1 and 33.2, NYNEX shall pay to ANTC five-hundred (\$500) per incident per affected switch. Notwithstanding the foregoing, NYNEX shall not be responsible for and shall not

be required to pay any damages to the extent the failure is due to PBX routing updates.

26.14 At all times during the term of this Agreement, each Party shall keep and maintain in force at each Party's expense all insurance required by law (e.g., workers' compensation insurance) as well as general liability insurance for personal injury or death to any one person, property damage resulting from any one incident, automobile liability with coverage for bodily injury for property damage. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance (which may be provided through a program of self insurance).

26.15 End User Repair Calls. The Parties will employ the following procedures for handling misdirected repair calls:

26.15.1 In answering repair calls, neither Party shall make disparaging remarks about each other, nor shall they use these repair calls as the basis for internal referrals or to solicit customers to market services. Either Party will respond with factual information in answering customer questions.

26.15.2 Each Party will notify its Customers as to the correct telephone numbers to call in order to access its repair bureaus.

26.15.3 To the extent possible, where the correct local exchange carrier can be determined, misdirected repair calls to one Party will be immediately referred to the other Party, as appropriate in a courteous manner, at no charge.

26.15.4 The Parties will provide their respective repair contact numbers to one another on a reciprocal basis.

27.0 TERM AND TERMINATION

27.1 The initial term of this Agreement shall be three (3) years (the "Term") which shall commence on the Effective Date. Absent the receipt by one Party of written notice from the other Party at least sixty (60) Days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term of this Agreement, provided that such notice cannot be served if a request to renegotiate pursuant to Section 27.1.2 has been filed, this Agreement shall automatically renew and remain in full force and effect on and after the expiration of the Term until terminated by either Party as set forth below.

27.1.1 If pursuant to Section 27.1 the Agreement continues in full force and effect after the expiration of the Term, either Party may terminate the Agreement ninety (90) Days after delivering written notice to the other Party of

the intention to terminate this Agreement, provided that such notice cannot be served if a request to renegotiate pursuant to Section 27.1.2 has been filed. In such cases, neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 27.1.1 other than to pay to the other Party any amounts owed under this Agreement.

27.1.2

(a) Notwithstanding the provisions of Section 27.1 and 27.1.1, either Party may, after the twenty-sixth month of the Effective Date, make a formal request to the other Party to renegotiate the terms of this Agreement pursuant to Section 251(c)(1) of the Act. The date of the other Party's receipt of such request shall be hereinafter referred to as the 'Renegotiation Request Date.' The Parties agree that within sixty (60) Days of such Renegotiation Request Date each Party will provide to the other a written description of its proposed changes to the Agreement. The Parties shall enter into negotiations on such proposed changes no later than seventy-five (75) Days after such Renegotiation Request Date.

(b) In the event that, notwithstanding the good faith efforts of both Parties, they are unable to agree on terms and conditions of a new agreement, effective as of the expiration of this Agreement, then either Party may, beginning one-hundred thirty five (135) Days after the Renegotiation Request Date, file a petition for arbitration with the PSC pursuant to Section 252(b) of the Act.

(c) The terms and conditions of this Agreement shall continue in full force and effect until the effective date of the PSC's decision pursuant to any petition filed under Section (b) above (the 'Arbitration Decision') if a request is made to renegotiate pursuant to Section (a) above.

(d) Nothing in this section shall be construed as a waiver by either Party of its right to appeal any decision of the PSC, including the Arbitration Decision.

27.2 Upon termination or expiration of this Agreement in accordance with this Section 27:

(a) each Party shall comply immediately with its obligations set forth in Section 36;

(b) each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement, except those subject to a dispute covered by Section 37.2;

(c) each Party's indemnification obligations shall survive termination or expiration of **this** Agreement;

(d) NYNW agrees to cooperate with ANTC and to use commercially reasonable **efforts** to effect an orderly and **efficient** transition to ANTC or ANTC's new vendor, subject to the payment by ANTC to NYNU: **of the** reasonable costs incurred in providing **such** cooperation. The Parties agree to cooperate to ensure uninterrupted service to their Customers during any transition period.

28.0 DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NO PARTY **MAKES** OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FUNCTIONS AND **PRODUCTS IT** PROVIDES UNDER **OR CONTEMPLATED** BY THIS AGREEMENT AND **THE** PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

29.0 CANCELLATION CHARGES

Except as expressly set forth in **this** Agreement, no cancellation charges shall apply for canceling a particular service or **network** element

30.0 NON-SEVERABILITY

30.1 The services, arrangements, Interconnection, **Network** Elements, terms and conditions of this Agreement were mutually negotiated by the Parties **as a** total arrangement and are intended to be non-severable, subject only to Section **39 of** this Agreement

30.2 Nothing in this Agreement shall be construed as requiring or permitting either Party **to** contravene any mandatory requirement **of** federal **or** state Law, or any regulations or orders adopted pursuant to **such** Law.

31.0 INDEMNIFICATION

31.1 With respect to all matters under this Agreement other than Wholesale Services (which shall be **governed by** applicable tariffs) ,**to the** extent not prohibited by applicable Law, each Party (the Indemnifying Party) shall indemnify and hold harmless the other Party ('**Indemnified Party**') from and against **loss**, cost, claim, liability, damage, and expense (including reasonable attorney's fees) to third parties **for**:

- (a) damage to tangible personal property or for personal injury proximately caused by the negligence or willful misconduct of the Indemnifying Party, ~~its~~ employees, agents or ~~contractors~~; and
- (b) claims for libel, slander, infringement of copyright arising from the material transmitted over the Indemnified Party's facilities arising from the Indemnifying Party's own communications or the communications of **such** Indemnifying Party's Customers; and
- (c) claims for infringement of patents arising ~~from~~ combining the Indemnified Party's facilities or services with, or the use of ~~the~~ Indemnified Party's services or facilities in connection with facilities of the Indemnifying Party..

31.2 The Indemnified Party will notify the Indemnifying Party promptly in writing of any claims, lawsuits, or demands by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under ~~this~~ Section, and, if requested by the Indemnifying Party, will tender the defense of **such** claim, lawsuit or demand. In the event ~~the~~ Indemnifying Party does not promptly assume or diligently pursue the defense of the tendered action, then the Indemnified Party may proceed to defend or settle said action and ~~the~~ Indemnifying Party shall hold harmless the Indemnified Party from any **loss, cost,** liability, damage and expense. In the event the Party otherwise entitled to indemnification from the other elects to decline such indemnification, then the Party making such an election may, at its own expense, assume defense and settlement of the claim, lawsuit or demand. The Parties will cooperate in every reasonable manner with the defense or settlement of any claim, demand, or lawsuit.

32.0 LIMITATION OF LIABILITY

32.1 Except (i) as otherwise provided in Section **31** of this Agreement, (ii) to the extent that appropriate remedies are agreed to ~~by~~ the Parties or ordered by the PSC pursuant to Section **33** of this Agreement, ~~and/or~~ (iii) to the extent that sanctions are ordered pursuant to Section **37** of this Agreement, no liability shall attach to either Party, ~~its~~ parents, subsidiaries, affiliates, agents, servants or employees for any cost, expense, claim, ~~liability,~~ damage, expense or other Loss in the absence of gross negligence or willful misconduct

32.2 Except (i) as otherwise expressly provided in Section **31** of ~~this~~ Agreement, (ii) to the extent that appropriate remedies are agreed to by the Parties or ordered by the PSC pursuant to Section **33** of this Agreement, ~~and/or~~ (iii) to the extent that sanctions are ordered pursuant to Section **37** of this Agreement, no Party shall be liable to the other Party for any **cost,** expense, claim, liability, damage, expense or other Loss caused by the conduct of the

other Party, the other Party's agents, servants, contractors or others acting in aid or concert with the other Party.

32.3 Except (i) to the extent that sanctions are ordered by the PSC pursuant to Attachment ADR of this Agreement, and/or (iii) to the extent that appropriate remedies expressly including Consequential Damages are agreed to by the Parties or ordered by the PSC pursuant to Section 33 of this Agreement, in no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including, but not limited to loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, 'Consequential Damages'), even if the other Party has been advised of the possibility of such damages.

32.4 Except (i) as otherwise provided in Section 31 of this Agreement and/or (ii) to the extent that appropriate remedies are agreed to by the Parties or ordered by the PSC in accordance with Section 33 of this Agreement, each Party's liability to the other Party for any Loss relating to or arising out of any negligent act or omission in its performance of this Agreement; whether in contract or in tort, shall be limited to the amount that is or would have been charged to the other Party by such negligent or breaching Party for the specified service(s) or function(s) not performed or improperly performed, and only for the period of time such service or function was not performed or improperly performed.

33.0 LIQUIDATED DAMAGES AND SERVICE QUALITY STANDARDS FOR SPECIFIED ACTIVITIES

33.1 The Parties acknowledge that the PSC has initiated Service Quality Proceeding in which it is considering the establishment of generic service standards and possible damages to the extent such standards are not met. At its option, ANTC may elect in its entirety, and subject to all terms, conditions and other limitations as may be applicable, to incorporate and replace such decision into this Agreement in lieu of this Section 33 and Attachment SQ of this Agreement. The Parties expressly acknowledge that this provision resulted from good faith negotiations by the Parties in an attempt to resolve issues raised by ANTC in its petition filed for arbitration under Section 252(b) of the Act.

33.2 The following service standards and liquidated damages shall apply until a decision is reached in the Service Quality Proceeding addressing service standards, parity and liquidated damages. When a final decision is issued in the Service Quality Proceeding, at ANTC's option, the Parties shall amend this Agreement to incorporate that ruling (except where specified). The Parties shall meet and negotiate in good faith to establish contract language

reflecting the outcome in the Service Quality Proceeding within thirty (30) Days' of the release of the ruling. If the Parties are unable to agree on appropriate language within thirty (30) Days of their first meeting, the Parties agree to submit any dispute for resolution under the provisions set forth in Attachment ADR.

33.3 NYNEX will provide ANTC with service that is at least equal in quality to that provided by NYNEX to itself or any subsidiary or affiliates; provided however, that the level of service it provides shall be no worse than NYNU provides itself or any subsidiaries or affiliates as of the Effective Date of this Agreement. For purposes of this section, the level of service that NYNEX provides itself as of the Effective Date of this Agreement shall mean the service level provided in calendar year 1996, if such data exists, or if such data does not exist, the first twelve (12) month period for which data is compiled.

33.4 NYNEX agrees to measure and track service quality and to provide monthly reports to ANTC in the form contained in Attachment SQ.

33.5 In the event that NYNEX fails to conform to the performance standards set forth in this section or in Attachment SQ, ANTC may request, in addition to any other remedies, and NYNEX shall perform and deliver to ANTC, a root-cause analysis of the reasons for NYNEX's failure to conform, and NYNEX shall correct said cause as soon as reasonably possible.

33.6 Liquidated Damages

33.6.1 Certain Definitions. When used in this Section 33.6, the following terms shall have the meanings indicated:

33.6.1.1 "Specified Performance Breach" means the failure by NYNEX to meet the incident-based or parity-based Liquidated Damages performance standards set forth herein or in Attachment SQ for any of the Specified Activities as defined below.

33.6.1.2 "Specified Activity" means (i) an appointment for new or changed service order that is missed by NYNEX as a result of NYNEX's actions and not caused by the customer's actions ('Missed Installation Appointments'); (ii) installations completed within five (5) business days from the receipt of a valid order; and (iii) service outage over twenty four (24) Hours for POT's service, Wholesale Service, and UNEs, nine (9) or less per order.

33.6.2 Specified Performance Breach. In recognition of the (i) loss of customer opportunities, revenues and goodwill which ANTC might sustain in the event of a Specified Performance Breach; (ii) the uncertainty, in the event of such a Specified Performance Breach, of ANTC having available to it customer opportunities similar to those opportunities currently available to ANTC; and (iii)

the difficulty of accurately ascertaining the amount of damages ANTC would sustain in the event of **such** a Specified Performance Breach, NYNEX agrees to pay ANTC, subject to Section 33.6.4 below, Liquidated Damages **as** set forth in Section 33.7 below in the event of the occurrence of a Specified Performance Breach.

33.6.3 Liquidated Damages. ANTC and NYNEX agree and acknowledge that: (i) **the** Liquidated Damages are not a penalty and have been determined based upon the facts and circumstances of ANTC and NYNEX **at the time of the** negotiation and entering into of this Agreement, **with** due regard given to the performance expectations of each Party; (ii) the Liquidated Damages constitute a reasonable approximation of the damages ANTC would sustain if its damages were readily ascertainable; and (iii) ANTC shall not be required to provide any proof of the Liquidated Damages.. Except as set forth in this Agreement, the Liquidated Damages **shall** be the sole and exclusive remedy of ANTC under this Agreement for NYNEX's failure to meet any Performance Standard **as** described in this section or in Attachment **SQ**.

33.6.4 Limitations. In no event shall NYNEX be liable to pay the Liquidated Damages if NYNEX's failure to meet or exceed any of the Performance Criteria is **caused**, directly or indirectly, by a Delaying Event. **A** "Delaying Event" means (i) a failure by ANTC to perform any of its obligations set forth in this Agreement (including, without limitation, the Implementation Schedule); (ii) any delay, act or failure to act by ANTC or a customer, agent or subcontractor of ANTC; (iii) any Force Majeure Event; or (iv) **such** other delay, act or failure to act as upon which the Parties may agree. If a Delaying Event **(i)** prevents NYNEX from performing or remedying a Specified Activity [as the case may be], then **such** Specified Activity shall be excluded from the calculation of NYNEX's compliance with the Performance Criteria, or (ii) only suspends NYNEX's ability to timely perform or remedy [as the case may be] the Specified Activity, the applicable time frame in which NYNEX's compliance with the Performance Criteria is measured shall be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the Delaying Event.

33.7 Performance Standards

33.7.1 Incident-based standards. Subject to the limitations set forth in Subsection 33.6.4, NYNEX shall pay as Liquidated Damages the following amounts for each Missed Installation Appointment caused by NYNEX's action and for each day that a resold service or unbundled network element is out of service for more than twenty four (24) hours:

33.7.1.1 Missed Installation Appointments. For resold services and, unbundled network elements, NYNEX shall pay ANTC as Liquidated Damages (i) twenty five percent (25%) of the applicable non-recurring

charges for the first Missed Installation Appointment relating to a specific service order, (ii) an additional 35 percent (35%) of the applicable non-recurring charges for the second Missed Installation Appointment relating to a specific service order, and (iii) the remaining 40 percent (40%) of the applicable non-recurring charges for the third Missed Installation Appointment relating to a specific service order. An appointment shall be considered missed when an order is not completed by the appointed time due to NYNEX's fault. Excluded from Missed Appointments will be Customer misses, where the customer (or ANTC) is not ready or required access is not available

33.7.1.2 Out of Service Over 24 Hours. For resold services and unbundled network elements (excluding interconnection trunks), NYNEX shall pay ANTC as Liquidated Damages 1/30 of the applicable monthly recurring charges for each day relating to an incident in which service is interrupted for greater than twenty four (24) hours. For purposes of this calculation, an out of service incident is considered to begin when it is properly reported by ANTC to NYNEX and an ANTC test has been done by ANTC and the diagnosis is provided to NYNEX. NYNEX defines out of service as when an end user indicates one or more of the following conditions: No dial tone, can not be called, can not call out

33.7.1.3 Interconnection Trunks. NYNEX shall pay ANTC as Liquidated Damages according to the schedule set forth in Section 33.7.1.4 following. Excluded from Missed Appointments will be Customer misses, where ANTC is not ready or required access is not available. Also excluded will be Trunks missed when Trunks exceed the annual forecast by over five percent (5%) in the specific location.

33.7.1.4 Firm Order Commitment ("FOC"). For interconnection trunks, NYNEX shall pay ANTC as Liquidated Damages for each FOC not sent by NYNEX to ANTC within ten (10) business days of receipt of a valid and complete LSR, twenty (20%) percent of the applicable non-recurring ordering charge. This provision shall apply until the PSC issues its ruling in the Service Quality Proceeding.

Days Past Due	Damages per (T1) Trunk Missed
1-3 business days	\$240
4-7 business days	\$475
each additional day	\$30

33.7.2 Parity Standards. Subject to the limitations set forth in Subsection 33.6.4, NYNEX shall pay as Liquidated Damages the amounts set forth in Appendix B. The performance levels set forth in said Appendix B list the

performance that NYNEX provides to its own end user customers as of the Effective Date of this Agreement.

33.7.2.1 The levels of performance provided by NYNEX to itself and to ANTC will be determined annually based on the performance reports furnished to ANTC and the PSC. If the reported level of performance for any parity category listed in Appendix E that NYNEX provided to itself is better than the level set forth in Appendix B, the improved performance level for the preceding year shall replace the performance level contained in Appendix B for the following year, and the Liquidated Damages schedule will be adjusted accordingly.

33.7.2.2 NYNEX shall pay ANTC for deviations from parity in accordance with the payment schedule indicated in Appendix B within sixty (60) Days after the end of each anniversary of the Effective Date of this Agreement.

33.8 ANTC shall pay fees as set forth in the Pricing Attachment for dispatches in error or falsely directed dispatches, dispatches where the trouble is a customer or ANTC caused trouble, where NYNEX dispatches a technician but does not gain access to the customer premises within 10 minutes, or where there is ultimately no trouble found after ANTC reports a trouble and NYNEX dispatches a person.

33.9 Nothing in this Section 33 shall in any way limit the Parties' duties and/or obligations under Section 26.9 of this Agreement.

34.0 REGULATORY APPROVAL

The Parties understand and agree that this Agreement will be filed with the PSC and may thereafter be filed with the FCC. Each Party covenants and agrees to support approval of this Agreement by the PSC or the FCC without modifying its terms, subject to: (1) either Party's rights under Section 39 of this Agreement, and (2) either Party's reservation of its rights to judicial review of the approval of the Agreement or any clause therein. In the event the PSC or FCC rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s). Notwithstanding the above, the Parties reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement.

This agreement is subject to change or modification as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction or as may be required by either Party based on any significant change in FCC or PSC rules which may impact the provision of Unbundled Network Elements,

Wholesale Services and other facilities and services provided under this Agreement or the rights and obligations of the Parties under the **Act**. The Parties shall use best efforts to negotiate in good faith revisions to this Agreement to incorporate any changes or modifications as may be required under this subsection. ANTC shall have a **reasonable** time to modify or redeploy its network or operations to reflect **such** changes **or** modifications.

35.0 **FORCE MAJEURE**

35.1 Force Majeure. Neither Party shall be responsible for delays or failures in performance **of** any part of this Agreement resulting from acts or occurrences beyond the reasonable control of **such** Party, regardless **of** whether such delays or failures in performance were foreseen or foreseeable as **of** the date **of** this Agreement, including, without limitation: adverse weather conditions, riot, sabotage, volcano, military authority, fire, explosion, power failure, acts of God, war, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement **of** any government or legal body; or labor unrest, including, without limitation, strikes, **slowdowns**, picketing or boycotts; or delays caused by the other Party or by other service or equipment vendors; or any other circumstances beyond the Party's reasonable control (collectively, **a 'Force Majeure Event'**). In **such** event, the affected Party shall, upon giving prompt notice to the other Party, be excused from such performance on a **day-to-day** basis to the extent of **such** interference (and the other Party shall likewise be excused from performance **of** its obligations on a day-to-day basis to the extent such Party's obligations relate to the performance **so** interfered with). **The** affected Party shall use its best efforts to avoid or remove the **cause(s)** of non-performance and both Parties shall proceed to perform with dispatch once the **cause(s)** are removed or cease.

35.2 The Parties shall cooperate to limit the impact of a Force Majeure Event **Such** cooperation shall include taking **such** actions as set forth in the Joint Grooming Plan and providing advance warning of a potential Force Majeure Event, if possible.

36.0 **CONFIDENTIALITY**

36.1 Confidentiality.

36.1.1 Any information such as specifications, drawings, sketches, business information, forecasts, **models**, **samples**, data, computer programs and other software and documentation **of** one Party (**a 'Disclosing Party'**) that is furnished or made available or otherwise disclosed to the other Party or any **of** its employees, contractors, agents or **Affiliates** (its '**Representatives**' and with a Party, a '**Receiving Party**') pursuant to this Agreement ('**Proprietary Information**') shall be deemed the property of the

Disclosing Party. Proprietary Information; if written, shall be marked 'Confidential' or 'Proprietary' or by other similar notice, and, if oral or visual, shall be confirmed in writing as confidential by the Disclosing Party to the Receiving Party within ten (10) Days after disclosure. Unless Proprietary Information was previously known by the Receiving Party to ~~be~~ free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, it (i) shall be held in confidence by each Receiving ~~Party~~, (ii) shall be disclosed to ~~only~~ those persons who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used only for ~~such~~ purposes; and (iii) may be used for other purposes only upon such ~~terms~~ and conditions ~~as~~ may be mutually agreed to in advance of use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Proprietary Information as required ~~by~~ any governmental authority or applicable law only in accordance with Section ~~36~~.1.2.

36.1.2 If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party ~~with~~ written notice ~~of~~ such requirement ~~as~~ soon as possible and prior to such disclosure. The Disclosing Party may then either seek appropriate protective relief from all or part of ~~such~~ requirement or, if it fails to successfully do ~~so~~, it shall be deemed to have waived the Receiving Party's compliance with this Section ~~36~~ with respect to all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which ~~such~~ Disclosing Party chooses to obtain.

36.1.3 In the event of the expiration or termination ~~of~~ this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other ~~Party~~ in connection with this Agreement and shall use all reasonable efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any ~~such~~ information, unless such information is now, or is hereafter disclosed, through no act, omission or fault of such Party, in any manner making it available to the general public. Either Party shall be permitted to request one copy of returned Proprietary Information (which shall remain confidential and subject to the protections set forth in this Section) ~~as~~ necessary to document its performance ~~of~~ its obligations under this Agreement

36.2 NYNEX shall establish appropriate screening mechanisms to ensure that information provided by ANTC or ANTC's customers for the purpose ~~of~~ ordering, maintenance or repair is not used for any marketing purpose ~~or~~ disclosed to anyone in a marketing capacity without the express written approval of ANTC. No Party shall, without obtaining the prior written consent of the Party

with proprietary rights thereto, use ~~such Party's~~ Proprietary Information for any purpose other than those set forth herein or for discussions between the Parties, internal planning in connection with this Agreement, the protection of its rights and the performance of its duties and obligations under this Agreement, and the provision of other NYNEX services to ANTC.

36.3 The Parties shall maintain in ~~strict confidence~~ all Proprietary Information for at least a period of five **(5)** years from the date of its expiration or termination (including all extensions thereto). At no time shall the information be disclosed to a ~~competitor~~ of the other Party (known to ~~be such after~~ reasonable inquiry).

36.4 The Parties acknowledge that any disclosure or misappropriation of Confidential Information in violation of this Agreement could cause irreparable harm, the amount of which may be extremely difficult to determine, thus potentially making any remedy at law or in damages inadequate. Each Party, therefore, agrees that the other Party shall have the right to apply to any **court of** competent jurisdiction for an order restraining any breach or threatened breach of this Section and for any other equitable relief as such other Party deems appropriate. This right shall ~~be~~ in addition to any other remedy available in law or equity.

36.5 The Parties will treat Customer Proprietary Information in accordance with Section 222 of the **Act** and any FCC regulations issued pursuant thereto.

37.0 DISPUTE RESOLUTION

37.1 Disputes arising out of the implementation, enforcement, or provisioning of services pursuant to this Agreement shall be addressed as set forth in Attachment ADR, except as otherwise provided in Section **37.2**.

37.2 Disputes involving amounts billed (other than ~~with respect to~~ Wholesale Services) shall be addressed **as follows**:

(a) If any portion of ~~an~~ amount due to a Party (the "Billing Party") under this Agreement is subject to a dispute between the Parties, ~~the~~ Party billed shall within thirty (30) Days of its receipt of the ~~invoice~~ containing such disputed amount give notice to the Billing Party of the amounts it ~~disputes~~ ("Disputed Amounts") and include in ~~such~~ notice the specific details and reasons for disputing each item. The billed Party shall pay when due (i) all undisputed amounts to the Billing Party and (ii) all Disputed Amounts into an interest bearing escrow account with a third party escrow agent mutually agreed upon by the Parties, except, however, if a Disputed Amount is less than five thousand dollars (\$5,000) in any

given invoice, the Parties agree that the amount **does** not have to be placed in an escrow account

(b) ~~If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties shall appoint a designated official who has authority to settle the dispute. The designated officials shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated officials, however all reasonable requests for relevant information made by one Party to the other Party shall be honored.~~

(c) ~~If the Parties are unable to resolve issues related to the Disputed Amounts after referral of the dispute pursuant to Section 37.2(b) of this Agreement, then either Party may elect to use the dispute resolution process set forth in Attachment ADR.~~

(d) ~~Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of, (i) one and one-half percent (1 1/2%) per month or (ii) the highest rate of interest that may be charged under applicable law. Any refunds owed by a Billing Party shall accrue interest from the date such amounts were paid to the Billing Party at same rate of interest set forth in this subsection. With respect to disputed amounts that have been placed in an escrow account pursuant to subsection 37.2(a), neither Party shall owe any interest upon resolution of the dispute but rather shall recover the amounts owed and any proportionate interest earned on such amounts in the escrow account~~

(e) ~~Remedies for Non-Payment In the event of non-payment by either Party of undisputed amounts due and payable under this Agreement, the other Party shall have available to it all remedies set forth in this Agreement and in the applicable NYPSC Tariffs, subject to the continuing jurisdiction of the PSC.~~

(f) ~~Nothing herein shall limit the time under applicable Law within which either Party may dispute any bill, it being understood that payment of any amounts under this section, unless otherwise indicated, does not constitute a waiver of either Party's rights under applicable Law to contest its obligation to pay any amounts allegedly owed under this Agreement.~~

37.3 The Parties agree that all negotiations pursuant to ~~this~~ Section 37 shall remain confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.